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ABSTRACT

In the wake of the 1974 decision handed down by the Supreme Court in Lau v Nichols, there has been a burgeoning of training programs, workshops, conferences, and graduate programs in bilingual bicultural education. This paper examines some of the sources of these developments and attempts to put theory and practice into historical, cultural, and educational perspective. With this aim in mind, three points are examined: (1) factors underlying the need for bilingual bicultural education; (2) historical factors leading to Lau; and (3) some judicial and legislative bases for bilingual bicultural education. It concludes that given the extent of legislative, judiciary, and executive support on the federal and state levels, it is likely that bilingual education programs will continue to grow in size and numbers. However, if the field is to grow in terms of strength, theoreticians and practitioners must analyze the real and potential pitfalls of bilingual education. (Author/RLV)

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LAU VS. NICHOLS - A TURNING POINT IN BILINGUAL EDUCATION

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In the wake of the 1974 decision handed down by the Supreme Court in Lau vs. Nichols, there has been a burgeoning of training programs, workshops, conferences, and graduate programs in bilingual bicultural education. In examining some of the sources of these developments five years after Lau, this paper attempts to put theory and practice into some kind of historical, cultural and educational perspective. With this aim in mind, the writer will examine: 1) factors underlying the need for bilingual bicultural education; 2) historical factors leading to Lau; and 3) some judicial and legislative bases for bilingual bicultural education.

The Supreme Court Decision: Lau vs. Nichols

The Lau vs. Nichols Supreme Court case was a culminating point in a chain of events emerging from social, economic, and cultural forces at play even before Brown vs. School Board of Topeka of 1954. And there seems to be a direct connection between the 1974 Lau decision and heightened tensions emerging from conditions such as: overcrowding, limited upward mobility associated with the educationally disadvantaged, inadequate cross-cultural understanding, and economical deprivation associated with ghetto conditions. If non-English-speaking groups such as the Chinese in San Francisco were to enjoy equal educational opportunities in American society, it seemed evident

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that the question of English language acquisition had to be surmounted.

The position taken by the plaintiff in the Lau case was that in order for non-English-speaking Chinese to have opportunities for educational experience and training equal to that of the majority group, the school system must provide special language instruction for non-English speakers. In short, it is the responsibility of the school district to provide equal educational opportunities to its clients.

This position had been spelled out in a memorandum issued in 1970 by J. Stanley Pottinger, Director of the Office of Civil Rights. The view expressed in the memorandum was that school districts have an obligation to provide equal educational opportunities for all children -- non-English-speaking as well as English-speaking. Based on the Civil Rights Act of 1964, the memorandum stated:

> ...school districts should create a culturally relevant educational approach to assure equal access of all children to its full benefits. The burden, according to this philosophy, should be on the school to adapt its educational approach so that the culture, language and learning style of all children in the school (not just those of Anglo, middle class background) are accepted and valued. Children should not be penalized for cultural and linguistic deficiencies, nor should they bear a burden to conform to a school-sanctioned culture by abandoning their own.[1]

Lau vs. Nichols was a case in which Legal Services attorneys filed a suit on behalf of 13 non-English-speaking Chinese against the San Francisco Unified School District. The case was filed as a class action suit on behalf of 1,800 Chinese-speaking students.[2] The suit stated that the Chinese students were being denied their right to an education because

they have been denied special language instruction. The attorneys for the plaintiff argued that the children had a constitutional right to special instruction. This position was denied by both the federal district court and the appellate court. But when the case was heard before the Supreme Court, the Department of Justice entered the case and argued the position that the San Francisco Unified School District (SFUSD) was in violation of the Pottinger memorandum.

When the Lau case came before the United States District Court, that court took the position that the Chinese did indeed have equal educational opportunities in that they: "received the same education made available on the same terms and conditions to the other tens of thousands of students in the San Francisco School District."[3] Thus, access to the same educational system provided others constituted the children's right to an education. This is generally in keeping with the Brown decision of 1954 -- students must have equal access to an education. But Lau went beyond Brown. According to Lau, providing the same facilities is not adequate. Equal access does not constitute equal education.

The case then went to the Ninth Circuit Court of Appeals; and the appellate court also ruled in favor of the school district. The Court supported the school district's position that its obligation to non-English-speaking students "...extends no further than to provide them with the same facilities, textbooks, teachers, and curriculum as is provided to other children in the district."[4] The position of the appellate court was that:

> Every student brings to the starting line of his educational career different advantages and disadvantages

> caused in part by social, economic and cultural background, created and contributed completely apart from any contribution by the school system. That some of these may be impediments which can be overcome does not amount to a 'denial' by the school district of educational opportunities....should the district fail to give them special education.[5]

The plaintiff then petitioned the United States Supreme Court; on June 12, 1973, the United States Supreme Court granted the petition to hear the case; and oral argument was heard on December 10, 1973. Amicus Curiae briefs were filed by the United States government, the National Education Association, the Harvard University University Center for Law and Education, the Lawyers' Committee for Civil Rights under Law, the Mexican-American Legal Defense, and Education Fund and the Puerto Rican Legal Defense and Education Fund.[6]

On January 21, 1974 a unanimous decision reversing the appellate court opinion was delivered by the United States Supreme Court. The decision was premised on the Civil Rights Act of 1964. Based on that Act, the Supreme Court ruled that each individual must have "a meaningful opportunity to participate in the education program."[7] The decision expanded on the definition of equality and went beyond Brown by stating that:

> There is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively fore-closed from any meaningful education.[8]

The Court's position on language is set forth in its statement that: "We know that those who do not understand English are certain to find their classroom experience wholly incomprehensible and in no way meaningful."[9]

Thus, the Supreme Court ruled that failure to provide instruction in the dominant language of the student constitutes a violation of the Civil Rights Act of 1964.

The Problem of Language: Some Historical Perspectives

Historically, language has been a social and economic impediment for Chinese immigrants in the United States. The language barrier was exacerbated by the practice of segregation by job category. When Chinese came to California in increasingly significant numbers beginning in the 1840's, they became workers in the gold and silver mines; builders of railroads, levees and canals, and workers in agriculture and domestic service. For the Chinese immigrants, segregated by job, economically dependent upon Chinese compradores, (the go-between the Chinese coolie and the American employer), socially self-reliant, English language acquisition was for the most part non-existent --- nominal for many and a reality for the few.[10]

Economically dependent, ethnically isolated, the Chinese tended to congregate in enclaves insulated by language barriers. Although attempts were made from time to time by missionary groups to provide education in the English language, there seemed to be no urgency along these lines as long as the Chinese were mostly immigrant men without families.[11] They had come alone, leaving their families behind. They had been recruited with an eye toward having them work in the United States on a limited, temporary basis. As "sojourners," their language needs were regarded by the host society as being of little importance. Without children and

family, living outside the mainstream of American society, the question of English language instruction for the Chinese seemed superfluous in the eyes of any segment of American society which contemplated the idea at all. A notable exception to this stance was that of the missionary who had religious conversion as a priority with English language acquisition as a means toward that end.[12]

American immigration policies vis a vis the Chinese were spasmodic. In 1882, immigrants of Chinese ancestry were excluded by federal legislation. Then, in 1943, it became legal for Chinese to enter the United States on a quota basis of 105 each year. Meanwhile, from 1962 to 1965, 15,000 Chinese were admitted to the United States. This group consisted mostly of refugees and immediate relatives of Chinese Americans. On October 3, 1965, the national origins quota system was abolished; and this event made the entry of Chinese into the United States in significant numbers legal for the first time since 1882.[13]

After 1882, American citizenship had special appeal to the Chinese "sojourner" who now faced the reality of exclusion. Should he decide to return to China for a visit, his chances for re-entering the United States were grim, if not automatically foreclosed. Church groups took an active interest in teaching English to the Chinese so that they might qualify for citizenship -- at least on the basis of language.[14]

From 1965 on, between 1,500 to 2,000 Chinese immigrants, including school age children, settled in San Francisco each year.[15] Given the array of policies including exclusion in 1882, admittance of Chinese at the rate of 105 each year beginning in 1943, and of 15,000 Chinese between 1962 and 1965 and finally the abolition of the national origins

quota system in 1965, the total number of Chinese settling in San Francisco increased significantly and steadily. At this point, the question of English language acquisition assumed new importance. For students who cannot comprehend the language of classroom instruction "...are effectively foreclosed from any meaningful education."[16]

Yet, in 1969, a San Francisco Unified School District statement acknowledged that:

> When these (Chinese-speaking youngsters) are placed in grade levels according to their age and are expected to compete with their English speaking peers, they are frustrated by their inability to understand the regular work....For (these) children, the lack of English means poor performance in school. The secondary student is almost inevitably doomed to be a dropout and another unemployable in the ghetto.[17]

During the hearing of Lau vs. Nichols the San Francisco Unified School District (SFUSD) indicated that:

1. there were 2,856 Chinese-speaking students in the District in need of special English instruction.
2. 1,790 of these children received no special language instruction.
3. of the 1,066 Chinese-speaking students receiving special help, about 2/3 received this help on a "pull out" fifty minutes-a-day basis.
4. only 260 of the 1,066 Chinese-speaking students receiving special English instruction were taught by bilingual Chinese-speaking teachers.[18]

It appears then, that most of the Chinese-speaking students were

placed in regular classes conducted in English. Given the language barrier inherent in the situation, as well as the segregated existence in the San Francisco Chinatown, it is noteworthy that more Chinese, native and foreign-born alike, and from grade school to university level did not have a severe language handicap. In this connection, it is perhaps significant that seven of the thirteen named plaintiffs in the Lau vs. Nichols are American-born Chinese.[19]

Education of Language Minorities Before and After Lau

Bilingual education has a record of educating nine million persons in the United States in both English and German prior to 1910.[20] About that time, however, as a result of heightened apprehensions toward the foreigner and his language, many states passed laws prohibiting the use of any language but English for classroom instruction. This meshed well with and presaged the Americanization movement of the 1920's, when such concerns as "English only" public school instruction reached a high point.[21]

More recently, there has been a resurgence of interest in and revitalized implementation of bilingualism. In 1960, for example, the New York City public school system established a bilingual program for Cuban immigrants.[22]

The concept and practice of bilingual education is premised on the principle that equal educational opportunity is a civil right. According to Title VI of the Civil Rights Act, equal educational opportun-

ity is a constitutional right of each individual in American society. Title VI provides that "No person shall...on account of race, color, or national origin, be excluded from participation in, be denied the benefits or be subjected to discrimination under any program or activity receiving Federal financial assistance."[23] In 1968, the link between civil rights and English language acquisition was forged in the form of Title VII of the Elementary and Secondary Education Act (ESEA). Through Title VII, $360 million was made available for the ensuing five years.[24] Eligibility for these funds was predicated on the elimination of "English-only" laws and the establishment of state-instituted bilingual programs. At the same time the Elementary and Secondary Education Act of 1965 was amended to permit the establishment of "pilot projects" to help economically deprived children who were "educationally disadvantaged because of their inability to speak English," and whose parents were on welfare or earning less than $3,000 a year. This amendment is also known as the Bilingual Education Act of 1968.[25] In 1974, bilingual education was expanded by the new Bilingual Education Act -- Section 105 of the Education Amendments of 1974. Henceforth bilingual education would no longer be for poor children only. All limited-English speakers now qualify. And biculturalism was added as an important component.[26] This was signed into law by President Ford on August 21. Last year, the 95th Congress passed the Education Amendments of 1978 which contains Title VII, the Bilingual Education Act as amended. This act was signed into law by President Carter November 1, 1978.[27]

Significance of Lau vs. Nichols

In view of the fact that there was, on the eve of Lau vs. Nichols,

an estimated five million limited or non-English-speakers in the United States in need of special language programs, it is understandable that school districts all over the United States watched with interest and concern the outcome of the Lau vs. Nichols case as well as San Francisco's compliance with the final decision.[28] According to the 1973 Annual Report on Immigration, there were 4.5 million Spanish-speaking children under twenty years who speak Spanish at home, 259,830 Asian children who speak little or no English and 56,493 Native American children who speak a Native American language as a first language.[29] According to the May 27, 1974 San Francisco Examiner, federal researchers noted "that bilingual bicultural program administrators in Philadelphia and on the Navajo Indian reservation in Arizona were watching as to whether San Francisco commits itself to a strong bilingual bicultural approach or simply expands its English as a Second Language (ESL) instruction."[30]

Clearly, even though the Lau decision specifically addressed limited and non-English-speakers of Chinese descent, "...it was understood that the decision included all children whose first language was one other than English."[31] The Examiner went on to state that "...the decision (was) expected to have its most striking effects outside San Francisco in school systems where students speak only Spanish."[32]

Court decisions since Lau support bilingual education as a means of counteracting disadvantages held by non-English-speaking pupils. In Serna vs. Portales, New Mexico School District, heard in the Tenth Circuit court on July 19, 1974, the United States Circuit Court of Appeals stated that bilingual education is the only appropriate remedy under the Lau decision. Serna ordered the expansion of bilingual bicultural education as the most effective means to meet the needs of Spanish-speaking

children.[33] In Aspira vs. Board of Education of the City of New York, the federal district court employed the Lau decision to sanction the implementation of a bilingual bicultural education program. This affected approximately 200,000 Spanish-speaking Puerto Rican children in New York City.[34] In Keyes vs. Denver Unified School District, the federal court handed down the opinion that bilingual bicultural education is required by Lau. The opinion states that:

> (it is) ineffective to require non-English-speaking children to learn a language with which they are unfamiliar, and at the same time acquire normal basic learning skills which are taught through the medium of that unfamiliar language.[35]

In addition to court interpretations of Lau, in the past ten years, nineteen states have adopted legislative or executive provisions for bilingual education.[36]

Impact of Lau vs. Nichols: In California

In California, the Lau decision has become a basis for more and stronger legislation for bilingual education. In 1974, almost immediately after the Lau decision was handed down, Wilson Riles, State Superintendent of Public instruction in testimony before the General Education Subcommittee of the United States House of Representatives stated that bilingual programs were "a legal right" for non-English-speaking children.[37]

The California legislature has taken the position that bilingual education is the only remedy for overcoming the language problems of non-English-speaking children in the schools. However, even before Lau, the legislature, by passing the Bilingual Education Act of 1972, made explicit it stand:

> Inability to speak, read and comprehend English presents a formidable obstacle to classroom learning and participation which can be removed only by instruction and a training in the pupils' dominant language. ...The legislature further recognizes that high quality bilingual programs in the public schools would allow the acquisition by students of educational concepts and skills needed to improve the development of human resources in this state....
>
> The primary goals of such (bilingual) programs shall be to develop competence in two languages for all participating pupils, to provide positive reinforcement of the self-image of participating children and to develop intergroup and intercultural awareness among pupils, parents and staff in participating school districts.[38]

Again, before Lau, the State Legislature mandated the Commission for Teacher Preparation and Licensing to set up guidelines for the certification of personnel teaching in bilingual classes. On May 9, 1973, the Commission issued the "Bilingual/Cross-Cultural Specialist Guidelines." This was to assist educational institutions to develop programs for training bilingual bicultural specialists.[39]

However, in 1976, by passing a major piece of legislation, the Chacon-Moscone Bilingual Bicultural Education Act, California became one of the first states to comply with Lau vs. Nichols. In Chacon-Moscone the state legislature voted to appropriate $3.8 million for the implementation of bilingual bicultural education. Chacon-Moscone requires all "California school districts to offer bilingual learning opportunities to each limited-English-speaking pupil enrolled in the public schools, and to provide adequate supplemental financial support to achieve such purpose."[40]

In order to comply with Chacon-Moscone, all California public schools, kindergarten through grade 12 are required to:

1. participate in an annual state census of limited and non-English-speaking students (LES and NES)
2. assess achievement in basic skills of each identified LES and NES student on a yearly basis
3. provide a bilingual individual learning program for each identified LES and NES student -- identified by individual student evaluation and parent consultation
4. establish a school level advisory committee where there are more than 20 LES students in a school.[41]

The example of California indicates a thrust in bilingual education which surpasses any attempts in this field ever undertaken in United States history. Prognostications that individuals of Spanish-speaking background will constitute the largest minority group in American society in the 1980's underscores the significance of Lau vs. Nichols.

In any overview of a topic as complex as bilingual education, it is incumbent upon the writer to at least acknowledge some of the problems regarding this field. Thus, one might well pose questions related to: effective language assessment for accurate identification of limited-English speakers; the perennial question of transitional versus maintenance of the dominant language of the non-English and limited-English speaker; the inadequate number of teachers who are bilingually as well as pedagogically trained; incentives for inducing more of our present and prospective teachers interested in becoming qualified to teach in bilingual programs. Ways of resolving the ever-present question of teaching subject matter as well as two languages -- a mandate in the state of California -- need to be devised with imagination, originality, and commitment. Ways of

incorporating cultural dimensions in the curriculum to provide a meaningful bicultural component that includes understanding via a study of varying belief and value systems need to be developed. These and similar problems must be worked out lest bilingual education becomes what its critics describe it to be: as having little correspondence between stated goals and expected, measurable outcomes; and fraught with seemingly insoluable, practical problems related to program implementation.

Given the extent of legislative, judiciary and executive support both on the federal and state levels, it is likely that bilingual education programs will continue to grow in size, and for a time at least, in numbers. However, if the field is to grow in terms of strength, theoreticians and practititioners alike need the self-knowledge and self-confidence to scrutinize with a clear eye and analyze with a clear mind the real and potential pitfalls of bilingual education. Only when this is done and done well will this field of endeavor gain the genuine interest, commitment, and support of the many segments of American society which are not as yet involved in the process of implementation of bilingual education. If Lau vs. Nichols is to have its broadest impact on American education, members of American society need to become actively involved in the concomitant processes of understanding the implication of Lau; and of participating in the review and modification of bilingual programs.

NOTES

[1]May 25th HEW Memorandum to State School Chiefs (1970).

[2]Lau vs. Nichols, 414 U.S. 563 (1974).

[3]Edward H. Steinman, "The Lau v. Nichols Supreme Court Decision of 1974," California Association of Teachers of English to Speakers of Other Languages. CATESOL Occasional Papers, Issue Number 2, Fall, 1975. p. 6

[4]Ibid., p. 7

[5]Ibid., p. 8

[6]Ling-chi Wang, "The Lau v. Nichols Decision: Right of Limited-English-Speaking Students." Mss Collection. Asian American Studies Library. University of California. Berkeley, California. 1974. p. 38

[7]Lau vs. Nichols, 414 U.S. 563 (1974).

[8]Ibid.

[9]Ibid.

[10]Gunther Barth. Bitter Strength: A History of the Chinese in the United States, 1850 - 1870. Cambridge, Mass.: Harvard University Press, 1974. pp. 171 - 172

[11]Ibid. p. 170

[12]Ibid. p. 168

[13]Stanford Lyman. "Strangers in the City: the Chinese in the Urban Frontier," in Tachiki, Wong, Odo, Wong, Roots: An Asian American Reader Los Angeles. The Regents of the University of California. p. 170. Also, "Asians in America," in Stone, James C. and DeNevi, Donald P. eds., Teaching Multi-Cultural Populations: Five Heritages. New York: Van Nostrand Co., 1971 pp. 372 - 74; 390.

[14]Barth, op. cit., p. 180

[15]San Francisco Bay Area Social Planning Council, Working Papers of Background Information on the Study of San Francisco's Chinese Newcomers, San Francisco, June 1970; also, Annual Report of Immigration and Naturalization Service, U.S. Department of Justice, 1965 - 1973.

[16]Lau vs. Nichols, 414 U.S. 563 (1974).

[17]Steinman, op.cit., p. 5.

[18]Testimony of L. Ling-chi Wang Before the General Subcommittee on Education of the Committee on Education and Labor of the United States House of Representatives on March 12, 1974 Unpublished Mss. p. 3.

[19]Steinman, op.cit., p. 7.

[20]Phyllis J. Kimura Hayashibara. "A guide to Bilingual Instructional Materials for Speakers of Asian and Pacific Island Languages," Amerasia Journal Vol. 5, Number 1, Asian American Studies Center, University of California, Los Angeles. p. 102

[21]By 1975, twenty four states permitted instruction in a language other than English. Feffert, Hannah N. et al., "The Current Status of United States Bilingual Education," Bilingual Education Series No. 4 (Arlington Va.: Center for Applied Linguistics, 1975), p. 5.

[22]Hayashibara, op.cit. p. 102.

[23]Title VI - Civil Rights Act of 1964 P.L. 90 - 247, Title VI 601, July 2, 1964, 78 Stat. 252 42 U.S.C. 2000d

[24]Title VII - Bilingual Education Programs (Bilingual Education Act) P.L. 90 - 247, Title VII, Sec. 702, 81 Stat. 816, 20 U.S.C. 880b (1968).

[25]Ibid.

[26]Wang, "Right of Limited-English-Speaking Students." op.cit. pp. 14-15.

[27]"President Carter Signs Education Amendments of 1978," Forum, National Clearinghouse for Bilingual Education, Vol. 2, No. 1. January, 1979. p. 1.

[28]"Lau vs. Nichols - The Legal Struggle for Bilingual Education," San Francisco Examiner May 27, 1974.

[29]A Better Chance to Learn: Bilingual Bicultural Education. United States Commission on Civil Rights Clearinghouse. Clearing House Publication 51. May, 1975. p. 13.

[30]"San Francisco's Role in Planning Bilingual Study," San Francisco Examiner. May 27, 1974.

[31]Ibid.

[32]Ibid.

[33]Serna vs. Portales, 499 F2d 1147 (10th Cir. 1974).

[34]Aspira vs. Board of Education 58 F.R.D. 62 (S. D. N.Y. 1973).

[35]Steinman op.cit. p. 11.

[36]William G. Milan. "End of the 'First Decade' -- A Time for Reflection," The Journal of the National Association for Bilingual Education. Vol. II, No. 2; March, 1978. p. 34.

[37]Wang, op.cit. "Right of Limited-English-speaking Students," p. 11.

[38]Bilingual Education Act of 1972. California Education Code. Sections 5761 - 5764.5.

[39]Wang, op.cit., "Right of Limited-English-speaking Student," p. 11.

[40]Chacon - Moscone Bilingual Bicultural Education Act, 1976. AB 1329. Title 5. California Administrative Code.

[41]Ibid.